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In the Supreme Court of the United States

OCTOBER TERM, 1986

CITICORP INDUSTRIAL CREDIT, INC., PETITIONER

v.

WILLIAM E. BROCK, SECRETARY OF LABOR

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

Whether a secured creditor that forecloses on collateral produced under conditions violative of the minimum wage and overtime provisions of the Fair Labor Standards Act can be enjoined, as the debtor could have been, from introducing the tainted goods into interstate commerce.

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BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-16a) is reported at 788 F.2d 1200. The opinions of the district courts (Pet. App. 18a-27a, 28a-33a) are reported at 608 F. Supp. 215 and 621 F. Supp. 22.

JURISDICTION

The judgment of the court of appeals (Pet. App. 17a) was entered on April 23, 1986. The petition for a writ of certiorari was filed on July 22, 1986, and granted on November 3, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 3(a) of the Fair Labor Standards Act, 29 U.S.C. 203(a), provides:

As used in this Act—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

Section 6 of the Fair Labor Standards Act, 29 U.S.C. 206, provides in relevant part:

(a) Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

Section 7 of the Fair Labor Standards Act, 29 U.S.C. 207, provides in relevant part:

(a)(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

Section 15(a)(1) of the Fair Labor Standards Act, 29 U.S.C. 215(a)(1), provides:

(a) After the expiration of one hundred and twenty days from June 25, 1938, it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 206 or section 207 of this title, or in violation of any regulation or order of the Administrator issued under section 214 of this title; except that no provision of this chapter shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this chapter shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of this chapter, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful.

STATEMENT

1. The Fair Labor Standards Act of 1938 (FLSA or Act), 29 U.S.C. (& Supp. III) 201 *et seq.*, was designed to combat the consequences of "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers." 29 U.S.C. 202 (a). To accomplish this, the FLSA sets out the basic

labor standards for the Nation's workforce. Section 6 requires covered employers to pay their employees a statutorily prescribed minimum wage for each hour worked. 29 U.S.C. 206. Section 7(a)(1) prohibits employers from requiring their employees to work more than 40 hours per week unless the employees are compensated at one and one half times their regular rate for each overtime hour. 29 U.S.C. 207 (a)(1). An employer who violates these provisions may be held liable for unpaid minimum and overtime wages, as well as for liquidated damages, in a suit brought either by the injured employees or by the Secretary of Labor. 29 U.S.C. 216(b) and (c). In addition, the Secretary may seek to enjoin a violation of Section 6 or 7. 29 U.S.C. 217.

The FLSA also "exclude[s] from interstate commerce goods produced * * * under conditions" that violate the Act. *United States v. Darby*, 312 U.S. 100, 109-110 (1941). Section 15(a)(1) of the Act makes it unlawful for "any person"—a term that is defined to include any "individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons" (29 U.S.C. 203(a))—to introduce into interstate commerce "any goods" that were produced by "any employee" who was "employed in violation" of the Act's minimum wage and overtime provisions. 29 U.S.C. 215(a)(1). The Secretary may seek an injunction to enforce this prohibition under Section 17 of the Act, 29 U.S.C. 217. "Willful[]" violations of Section 15 also are criminal offenses that are punishable by fine and, in certain cases, imprisonment. 29 U.S.C. 216(a). Under the FLSA, then, only an "employer" (as separately defined in 29 U.S.C. 203(d)) may be held liable for unpaid minimum wages or overtime compensa-

tion, and only a "willful" violator may be punished criminally; but any "person" may be restrained from introducing into commerce the so-called "hot goods" that are produced under substandard labor conditions.

2. Petitioner is a corporation that makes commercial loans to industrial borrowers (Pet. App. 19a). On December 14, 1983, petitioner entered into a financing agreement with Qualitex Corporation, the corporate predecessor of a group of companies consisting of the Ely Group, Inc. (Ely Group) and its subsidiaries Rockford Textile Mills, Inc. (Rockford), and Ely & Walker, Inc. (Ely & Walker) (collectively Ely) (Pet. App. 2a; see C.A. App. 393-411). Ely did business in Tennessee, manufacturing and warehousing textiles for distribution nationwide (Pet. App. 19a).¹ Petitioner agreed to lend Ely up to \$11 million by transferring funds on a daily basis to Ely's so-called "zero balance bank account" to meet Ely's daily operating expenses (*id.* at 2a & n.1).² The collateral securing the loan included, among other things, Ely's inventory (*id.* at 2a; C.A. App. 356-357). It is undisputed that petitioner fully perfected its security interest in the collateral (Pet. App. 2a).

¹ Rockford manufactured hosiery at a plant in McMinnville, Tennessee (Pet. App. 29a). Ely & Walker manufactured clothing in Paragould, Arkansas, and in Memphis, Tennessee, where it also operated a warehouse (*id.* at 21a).

² Under this arrangement, Ely was informed each day by its banks of the amount needed to cover checks that had cleared. Ely then notified petitioner of that amount. Petitioner in turn wired the necessary funds to Ely's banks. Pet. App. 2a n.1. To assure repayment, Ely's accounts receivable, when paid, were credited directly to petitioner through a "lock box" system (*id.* at 19a).

The financing agreement imposed detailed reporting requirements on Ely (see Pet. App. 2a). Among other things, Ely was obligated to provide petitioner with a weekly schedule of inventory (C.A. App. 366) and a monthly balance sheet, statement of accounts receivable and sales, and income statement (*id.* at 367). Ely also was subject to a number of other reporting requirements relating to its customers (*id.* at 359), machinery (*id.* at 360), accounts receivable (*id.* at 369), and financial condition (*ibid.*). It was required to provide petitioner with essentially all financial information that petitioner might request (*id.* at 367). And Ely was obligated to provide petitioner with access to all of its records, files, and books of account (*id.* at 366). During the term of the agreement, petitioner sent its representatives to Ely's premises to monitor Ely's inventory, sales, credits, and purchases (Pet. App. 20a). Although petitioner did not verify that Ely was paying its employees, the district court found that petitioner checked payroll records to determine whether Ely paid employee taxes (*ibid.*).

3. Ely's sales started falling below projections in the fall of 1984, and Ely stopped reporting to petitioner in January 1985 (Pet. App. 2a-3a). By early February 1985, Ely's loan balance had increased to approximately \$9,500,000, and Ely had defaulted on certain obligations under the financing agreement. Petitioner last advanced funds to Ely on February 8, 1985. *Id.* at 3a. On February 11, 1985, petitioner terminated the financing agreement and demanded payment in full of Ely's obligations (*ibid.*; see *id.* at 20a).

At the time that petitioner cancelled the agreement, it was aware that it had been funding Ely's

payroll and that "when this funding ceased Ely could not meet its payroll obligations to its employees" (Pet. App. 19a). Petitioner nevertheless did not foreclose immediately after terminating the agreement, instead giving Ely an opportunity to devise a plan for continuing its operations (*id.* at 20a; see Pet. Br. 5). Ely's employees, meanwhile, many of whom were working on rush orders of seasonal clothing for three large retail chains (see C.A. App. 274-280), were not informed of these developments. They continued working until February 19, 1985, when petitioner finally did foreclose and take possession of the collateral and Ely ceased operations (Pet. App. 3a). Petitioner's representatives had remained on Ely's premises through that date, monitoring Ely's activities (C.A. App. 191, 192, 214, 215, 230, 277, 278).

Following the plant closings, the Wage and Hour Division of the Department of Labor began an investigation to determine whether Ely's employees had been paid in accordance with the FLSA. The investigation revealed that Ely had failed to pay its employees for various periods between January 27, 1985, and February 19, 1985 (Pet. App. 3a). The Department of Labor therefore concluded that the items manufactured during those periods were hot goods that had been produced in violation of Sections 6 and 7 of the FLSA and that, under Section 15(a)(1), could not be introduced into interstate commerce.

The Department of Labor investigators also learned that petitioner had stated its intention to sell Ely's collateral (Pet. App. 22a; see *id.* at 3a) and that petitioner had already shipped a portion of Ely's goods interstate with knowledge that the Ely employees had not been paid (*id.* at 21a). On March 15,

1985, and March 21, 1985, the Secretary accordingly brought separate but related actions against Ely and petitioner in the United States District Court for the Eastern and Western Districts of Tennessee. The Secretary alleged actual and potential violations of Section 15(a)(1) of the FLSA, and sought to enjoin both Ely and petitioner from placing in interstate commerce goods that had been produced from February 3 through February 19, 1985 (Pet. App. 3a-4a).³

4. Both district courts subsequently entered preliminary injunctions against the shipment of Ely's inventory (Pet. App. 18a-27a, 28a-33a). They held that Section 15(a)(1)—which makes it unlawful for “any person” to ship hot goods interstate—prohibited not only Ely but also petitioner from transporting or selling items produced by employees who had not been paid. The courts noted that Section 15(a)(1) makes no exception for creditors who acquire hot goods through foreclosure, and the courts “refuse[d] to read such an exception into the Act.” Pet. App. 32a; see *id.* at 25a.

Both courts reasoned that this straightforward reading of Section 15(a)(1) drew support from the statutory policy of “‘exclud[ing] from interstate commerce’ goods produced under substandard labor conditions” (Pet. App. 24a (quoting *Darby*, 312 U.S. at 109-110); see Pet. App. 31a). As the Western District court noted, “[t]his ‘evil’ is the same whether the goods are sold and shipped in commerce by the manufacturer or by a foreclosing creditor” (*id.* at 24a); “[m]oreover, if foreclosing creditors are free to ship and sell tainted goods across state lines, the

³ The Secretary also sought back pay and liquidated damages from Ely under Sections 16(c) and 17 of the FLSA.

temptation to overextend credit to marginal producers is strong, as is the likelihood that such producers will become unable to meet their payrolls” (*ibid.*).⁴

The district courts therefore concluded that “[s]ecured creditors such as [petitioner] take their security subject to the laws of the land. If such creditors have a security interest in property which was produced in violation of the provisions of the Fair Labor Standards Act, they retain their security interest”—but that interest “is subject to the provisions of the Act.” Pet. App. 32a; *id.* at 25a. The courts added that while the most culpable party here is Ely, “in light of the purposes of the Act, it would be an unjust and harsh result for the creditor to get the benefit of the labor of the employees during the period of time they produced goods and were not paid as provided by the Act; a benefit which the creditor would not have without the employees['] labor” (*id.* at 32a-33a; *id.* at 26a).

⁴ The court in the Western District expressly found that, while there was no evidence of collusion between petitioner and Ely, “the evidence does show that [petitioner] knew it was funding the payroll of Ely Group, Inc., and when this funding ceased Ely could not meet its payroll obligations to its employees” (Pet. App. 19a). In addition, the court found that petitioner had shipped goods in interstate commerce after Ely ceased operations “and did so with knowledge that employees of the various entities had not been paid” (*id.* at 21a). The court also noted that petitioner had negotiated a possible sale of a major part of Ely's assets and planned an imminent transfer of inventory from Ely & Walker's Memphis warehouse to Nashville, Tennessee (*ibid.*). The Eastern District court expressly reserved the question whether there had been collusion between petitioner and Ely because it concluded that petitioner should be enjoined from shipping Ely's goods in any event (*id.* at 31a).

A divided panel of the court of appeals affirmed (Pet. App. 1a-16).⁵ The court "follow[ed] the 'plain language' of the statute" in "conclud[ing] that the phrase 'any person' applies to [petitioner], as a secured creditor" (*id.* at 7a (footnote omitted)). In reaching this conclusion, the court emphasized that "one of the reasons that Congress passed the FLSA was to exclude tainted goods from interstate commerce" and that "prohibiting secured creditors, such as [petitioner], from shipping 'hot goods' in interstate commerce furthers that Congressional intent" (*ibid.*). This result, the court reasoned, "does not change the priorities in bankruptcy. [Petitioner] 'owns' the goods. The 'hot goods' provision merely prevents [petitioner] from shipping, delivering or selling the goods in interstate commerce" (*id.* at 10a).

The court accordingly rejected the reasoning of *Wirtz v. Powell Knitting Mills Co.*, 360 F.2d 730 (2d

⁵ On April 10, 1985, the United States District Court for the Eastern District of Tennessee granted petitioner's motion for a stay of the preliminary injunction pending appeal. The stay permitted the delivery and sale of inventory worth about \$200,000, on the condition that petitioner place the proceeds of the sale in a separate interest-bearing account to be used to pay the wages of Ely's former employees at Rockford in the event that Section 15(a)(1) ultimately was held to apply to petitioner (C.A. App. 104-105). The district court in the Western District of Tennessee denied a similar motion, but the court of appeals granted a stay on the same condition on March 29, 1985 (Pet. App. 4a), permitting petitioner to sell Ely and Walker's assets as an ongoing business. The court of appeals subsequently modified the stay to permit petitioner, which had paid more than \$4.5 million into an interest-bearing escrow account, to withdraw all but \$1.5 million (*id.* at 34a-35a).

Cir. 1966), which had held that Section 15(a)(1) is inapplicable to secured creditors who take possession of goods produced in violation of the FLSA. The court of appeals found the creation of such a judicial exception to the reach of Section 15(a)(1) inappropriate. Pet. App. 9a. The court also reasoned that such an exception would be inconsistent with the congressional intention that hot goods not "taint the channels of interstate commerce" or "compete with goods produced in conformity with the FLSA's minimum wage and overtime provisions," and thus would conflict with the interpretation of the FLSA set out in *United States v. Darby*, *supra* (Pet. App. 10a). And the court of appeals, noting that Congress had created an explicit but limited exception to Section 15(a)(1) for certain good faith purchasers of hot goods—an exception for which petitioner did not qualify—concluded that petitioner "should not be in a better position as a secured creditor, for which Congress has not created an exception[,] than as a 'good faith purchaser,' for which Congress specifically added an exception" (Pet. App. 12a).⁶

⁶ Judge Engel dissented (Pet. App. 13a-16a). He stated that "[i]f we were writing upon a clean slate, the majority opinion, in adopting a literal interpretation of the Fair Labor Standards Act, would have considerable appeal for the term 'any person' is indeed broad and has been carefully defined by Congress" (*id.* at 13a). In his view, however, under a "common sense application of section 15(a)(1), Congress was looking instead at application of the Act in the course of the ongoing production of goods and not at the situation obtaining here" (*id.* at 15a). He therefore would have followed the holding of *Powell Knitting Mills* (see *id.* at 15a-16a).

SUMMARY OF ARGUMENT

As petitioner acknowledged below—and as the plain terms of the Fair Labor Standards Act make clear—Ely's failure to pay its employees violated the Act. Ely therefore was prohibited by Section 15(a) (1) from placing the goods produced by its employees' unpaid labor into interstate commerce. The question in this case is whether petitioner, a creditor that acquired the "hot goods" from Ely by foreclosure, is also bound by this federal statutory restriction. The text, legislative history, and purposes of the "hot goods" clause all compel an affirmative answer.

1. The text is dispositive. Section 15(a)(1) prohibits "any person" from "transport[ing] * * * or sell[ing] in commerce * * * any goods in the production of which any employee was employed in violation of [the FLSA's minimum wage and overtime provisions]." The breadth of that prohibition is confirmed by two explicit exemptions to Section 15(a) (1), neither of which is applicable here: one for common carriers, and a limited exemption (for which petitioner does not qualify) added in 1949 for good faith purchasers who obtain goods on "written assurance from the producer that the goods were produced in compliance with [the FLSA]." That Congress felt the need to write these exemptions into the Act plainly demonstrates its expectation that the bar on the transportation of hot goods would otherwise be all-inclusive. And given these precisely drawn exemptions, petitioner cannot plausibly suggest that an additional exception should be implied for the benefit of secured creditors.

The legislative history adds two compelling points. First, Congress let it be known that it had drafted

the FLSA with special care and intended its words to be applied as written; this Court has, accordingly, always construed the Act literally and liberally "to apply to the furthest reaches consistent with congressional direction." *Tony & Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 296 (1985) (citation omitted). Second, Congress in 1938 specifically considered—and declined to enact—a provision that would have exempted certain "nonculpable" persons from the prohibitions of Section 15(a) (1). A limited form of such an exemption was added 11 years later, in which Congress for the first time "*ma[de] it lawful* for a purchaser in good faith of goods produced in violation of the act to sell such goods in commerce" (H.R. Conf. Rep. 1453, 81st Cong., 1st Sess. 31 (1949) (emphasis added)), if the purchaser had "written assurance" from the manufacturer of the latter's compliance with the statutory standards. If Congress had wanted to create a broader exemption for *all* good faith purchasers, or for secured creditors, it surely knew how to do so.

2. "[T]he goal [of the FLSA] is to outlaw[] from interstate commerce goods produced under conditions that fall below minimum standards of decency" (*Tony & Susan Alamo Foundation*, 471 U.S. at 296). This goal is well served by reading the statute literally and applying it to, among others, creditors in the position of petitioner. Doing so puts both struggling employers like Ely and the creditors that oversee their operations on notice that failure to pay employees is not an acceptable (or profitable) means of cutting costs. It also eliminates the incentive that creditors would otherwise have to encourage the continuation of manufacturing operations—and the production of collateral—under conditions where employees will likely not be paid.

3. Although petitioner asserts repeatedly that the decision below creates a "secret lien" on behalf of Ely's employees and somehow disturbs "creditors' rights," the court of appeals' ruling in fact does nothing of the kind. It does not give the employees any lien, secret or otherwise, or any other rights in the hot goods. It does not alter petitioner's rights in the goods as against its debtor, Ely, or as against Ely's other creditors. It merely enforces a statute that, for reasons grounded in public policy, prohibits the shipment of hot goods by anyone. Such a generally applicable restriction on a particular use of particular goods does not affect "creditors' rights" merely because a creditor chooses such goods as collateral. Indeed, the FLSA is simply one of many statutes, such as the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), that prohibit for public policy reasons the interstate shipment of specified goods; such statutes obviously do not create liens or affect the rights of creditors as such.

The fact that the taint affecting the hot goods is one that can be cured by the payment of wages to Ely's employees does not change the analysis. The suit here was brought by the Secretary not to collect a debt but to redress an injury to the public. In analogous circumstances, a creditor foreclosing on, for example, flammable fabrics, which may not be introduced into interstate commerce, might elect to treat the fabrics to bring them into conformity with the statutory standard. Such an arrangement obviously would not create a lien or have anything to do with creditors' rights. This case differs only in that a different federal policy is involved.

ARGUMENT

A SECURED CREDITOR THAT FORECLOSES ON COLLATERAL PRODUCED UNDER CONDITIONS VIOLATIVE OF THE FAIR LABOR STANDARDS ACT CANNOT TRANSPORT THAT COLLATERAL IN INTERSTATE COMMERCE

The Fair Labor Standards Act is a broad and straightforward statute. It mandates the payment both of a minimum wage and of overtime compensation to covered employees, and its plain terms flatly exclude from interstate commerce the "hot goods" that are produced by workers who have not been paid in conformity with the statutory standard. In this case, it is undisputed that Ely's employees did not receive wages for the relevant period; it is also conceded that petitioner wished to introduce into interstate commerce the goods produced by those employees. Petitioner's brief therefore necessarily reduces to a lengthy argument that the FLSA does not mean what it says. Not surprisingly, petitioner's analysis "would restrict the Act not only arbitrarily but also inconsistently with its broad purposes." *Powell v. United States Cartridge Co.*, 339 U.S. 497, 515 (1950).

A. Ely's Failure To Pay Its Employees Violated The Fair Labor Standards Act

A threshold question in this case is whether the Ely inventory on which petitioner foreclosed constituted "hot goods"—whether, that is, the inventory had been produced under conditions that violated the Act. Petitioner obliquely suggests in this Court that Ely's failure to pay its employees did not violate the Act because Sections 6 and 7 of the FLSA "address wage rates rather than the problem of nonpayment due to insolvency" (Pet. Br. 16; see *id.* at 22).

Below, however, petitioner acknowledged that Ely's failure to pay its employees violated the Act,⁷ and the court of appeals found it obvious that "the goods that Ely produced during [the period when its employees received no wages] were produced in violation of the FLSA's minimum wage and overtime provisions" (Pet. App. 3a (footnote omitted)).

Whatever petitioner's current position on the question, the court of appeals' conclusion plainly was correct. Section 6(a) of the FLSA provides flatly that "[e]very employer *shall pay* [the statutory minimum wage] to each of his employees" (29 U.S.C. 206(a) (emphasis added)), while Section 7(a)(1) states that "no employer shall employ any of his employees" in excess of 40 hours per week "unless such employee *receives compensation*" at one and one-half times his regular rate (29 U.S.C. 207(a)(1) (emphasis added)). The Act makes no exception for employers who are unable to pay, or who are unwilling for any other reason to comply with the statutory requirements. To the contrary, it has been understood for over 40 years that "[t]he Act does not exempt employers who are in financial difficulties." *Torres v. American R. Co.*, 157 F.2d 255, 256 (1st Cir.), cert. denied, 329 U.S. 782 (1946). See *Hodgson v. A-1 Ambulance Service, Inc.*, 455 F.2d 372, 373-375 (8th Cir. 1972) (employer's financial difficulties do not relieve it of the obligation to pay wrongfully withheld minimum wages and overtime pay); *Hodgson v. Taylor*, 439 F.2d 288, 290 (8th Cir. 1971) (same); *Wirtz v. Malthor, Inc.*, 391 F.2d 1, 3 (9th Cir. 1968)

⁷ Petitioner argued instead that "Ely's violation of the FLSA does not subject [petitioner] to being enjoined under that Act" (Pet. C.A. Br. 10).

(same); *Torres*, 157 F.2d at 256 (same).⁸ Indeed, a contrary interpretation would induce employers to gamble (as Ely did here), obtaining labor they are not likely to be able to pay for.

Petitioner's suggestion (Pet. Br. 16-17) that an employer complies with the Act so long as its posted or promised wage rates exceed the statutory minima—even if its employees are not actually compensated at those rates—thus is insupportable. Such an employer obviously has not "pa[id] [the minimum wage] to each of his employees" as required by Section 6, and the employees in turn have not "receive[d] [overtime] compensation" as mandated by Section 7. And allowing an employer to escape the Act simply by posting wage rates that it later fails to pay (or, as in Ely's case, that it lacks the means to pay) would, of course, render the FLSA's protections largely nugatory.⁹

⁸ Indeed, even the two cases upon which petitioner relies (Pet. Br. 46-49) for the proposition that secured creditors are outside the scope of the FLSA (*Wirtz v. Powell Knitting Mills Co.*, 360 F.2d 730, 733 (2d Cir. 1966), and *Shultz v. Factors, Inc.*, 65 Lab. Cas. (CCH) ¶ 32,487, at 44,732 (4th Cir. 1971), took it for granted that an employer violates the FLSA when insolvency prevents it from paying its employees. See also *Dunlop v. Sportsmaster, Inc.*, 77 Lab. Cas. (CCH) ¶ 33,293, at 47,136 (E.D. Tenn. 1975) (when employees were not paid by an insolvent employer, "it is clear that all [goods] manufactured during that [period] were produced in violation of the Act").

⁹ Petitioner is incorrect in contending (Pet. Br. 17) that the FLSA "add[s] nothing" to "[t]he employer's obligation under state law to pay the full amount of wages due." At the simplest level, the FLSA provides remedies that supplement those available under state law, such as liquidated damages and attorneys' fees. 29 U.S.C. 216(b). More importantly, the Secretary may bring an FLSA action, either for damages

B. Section 15(a)(1) Bars The Interstate Shipment of Hot Goods Acquired by Secured Creditors Through Foreclosure

1. *The Statutory Language.* a. The conclusion that the goods acquired by petitioner were produced in violation of the Act is dispositive here. Section 15(a)(1) prohibits “any person” from “transport[ing] * * * or sell[ing] in commerce * * * any goods in the production of which any employee was employed in violation of [the FLSA’s minimum wage and overtime provisions].” 29 U.S.C. 215(a)(1) (emphasis added). Section 3(a) of the FLSA in turn expansively defines “person” to include “an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.” 29 U.S.C. 203(a). Corporate entities like petitioner thus fall squarely within the language of Section 15(a)(1)—as both the dissenting judge below (see Pet. App. 13a) and the Second Circuit in

(see 29 U.S.C. 216(c)) or for injunctive relief (including injunctive relief against the withholding of minimum wages or overtime compensation “found by the court to be due”) (29 U.S.C. 217). Such an action, while it may benefit the affected employees, is designed to serve the public interest (see pages 39-41, *infra*) and may be brought even over the objection of the employees involved. Indeed, the ability of the Secretary to bring an action is essential to preserve the efficacy of the Act, given the possibility that employers may coerce employees to surrender their FLSA rights—a prospect that was of considerable concern to the drafters of the FLSA. See *Brooklyn Savings Bank v. O’Neil*, 324 U.S. 697, 707-708 (1945). It is true, of course, that an employer’s insolvency might make futile an attempt to enjoin further FLSA violations or to collect back pay. See generally *Donovan v. Brown Equipment & Service Tools, Inc.*, 666 F.2d 148, 159 (5th Cir. 1982); *Taylor*, 439 F.2d at 290. But that unhappy circumstance does not alter the fact of the employer’s violation.

Wirtz v. Powell Knitting Mills Co., 360 F.2d 730, 732 (1966), acknowledged.

The statutory structure confirms that Congress acted deliberately in making Section 15(a)(1) broadly applicable to “any person.” That provision contains two explicit exceptions to the otherwise general bar on the interstate shipment of hot goods. The first, which was enacted with the original FLSA in 1938, exempts common carriers from the statutory restriction on the transportation of such goods—an exemption that would hardly have been necessary if, as petitioner suggests, the prohibition was meant to apply only to those responsible for the violation. The second exception, added in 1949, exempts purchasers of goods if, but only if, they can show that they “acquired [the hot goods] in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of [the FLSA], and [that they] acquired such goods for value without notice of any such violation.” See 29 C.F.R. 789.5.¹⁰

Given these narrow and precisely drawn exceptions for certain persons far removed from the FLSA violation, petitioner cannot plausibly suggest either that

¹⁰ The means by which ultimate consumers are excluded also confirms the breadth of Section 15(a)(1). The provision prohibits the shipment of “goods” produced in violation of the Act, and the FLSA defines the term “goods” to exclude “goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer or processor thereof.” 29 U.S.C. 203(i). See *United States Cartridge Co.*, 339 U.S. at 513. Until the “products have been delivered into the actual physical possession of their ultimate consumer,” however, they remain subject to the reach of Section 15(a)(1) (*United States Cartridge Co.*, 339 U.S. at 513).

the prohibition is not a broad one or that an additional exemption from Section 15(a)(1) should be implied for the benefit of secured creditors. See *Mabee v. White Plains Publishing Co.*, 327 U.S. 178, 183-184 (1946); *Addison v. Holly Hill Fruit Products Co.*, 322 U.S. 607, 617 (1944). See generally *Andrus v. Glover Construction Co.*, 446 U.S. 608, 616-617 (1980). As the court of appeals observed, petitioner "should not be in a better position as a secured creditor, for which Congress has not created an exception[,] than as a 'good faith purchaser,' for which Congress specifically added an exception" (Pet. App. 12a).¹¹

Other features of the FLSA also belie petitioner's attempt to read unstated limitations into the statutory language. The centerpiece of petitioner's analysis of the Act is its assertion that Section 15(a)(1) may be applied only against entities involved in "the chain of production and distribution of goods in in-

¹¹ Although petitioner obliquely suggests otherwise (Pet. Br. 37 n.56), it plainly cannot benefit from Section 15(a)(1)'s existing bona fide purchaser exemption. Petitioner did not acquire the collateral "without notice" of Ely's FLSA violation, as the statutory exemption requires; to the contrary, petitioner was aware of Ely's failure to pay its employees prior to the acquisition (see C.A. App. 305-306) and shipment (see Pet. App. 21a) of the collateral, and petitioner knew more generally that it had been funding Ely's payroll (*id.* at 19a). In addition, as the court of appeals observed, even if a secured creditor can be said to "purchase" goods when it forecloses on them, petitioner "does not qualify as a 'good faith purchaser' because [it] did not rely 'on written assurance from the producer that the goods were produced in compliance with the requirements of [the FLSA]'" (*id.* at 11a-12a; see *id.* at 12a n.11). Presumably for these reasons, petitioner did not contend below that it qualified as a good faith purchaser (see *id.* at 11a).

terstate commerce," and to "culpable parties" (Pet. Br. 26). In fact, Congress specifically limited the reach of *other* provisions of the FLSA to such entities. The prohibitions against the use of child labor set forth in Section 12(a) of the Act, for example, are enforceable only against "producer[s], manufacturer[s] and dealer[s]." 29 U.S.C. 212(a); see also 29 U.S.C. 215(a)(4). Culpability is expressly addressed in Section 16(a), which provides criminal penalties for "willful[]" violators of Section 15. 29 U.S.C. 216(a). Cf. *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697, 709 (1945). Back pay may be sought only from offending "employer[s]" (see 29 U.S.C. 216(b))—a term that Congress defined separately, and far less broadly, than the term "person." Compare 29 U.S.C. 203(a) with 29 U.S.C. 203(d). Yet Congress pointedly omitted any of these limitations from Section 15(a)(1), which is applicable to "any person." The obvious conclusion to draw from these contrasts within the Act is that Congress specifically intended Section 15(a)(1) to apply broadly, as its language suggests. See generally *INS v. Cardoza-Fonseca*, No. 85-782 (Mar. 9, 1987), slip op. 10; *id.* at 1-2 (Scalia, J., concurring in the judgment). Cf. *United States Cartridge Co.*, 339 U.S. at 517.

b. A literal reading of the broad language of Section 15(a)(1) accords with this Court's usual approach to the FLSA. Noting the care with which the statute was written, the Court has explained that it is inappropriate to "draw on some unexpressed spirit outside the bounds of the normal meaning of words" when reading the Act. *Holly Hill*, 322 U.S. at 616-617. Instead, the Court "has consistently construed the Act 'liberally to apply to the furthest reaches consistent with congressional direction'"

(*Tony & Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 296 (1985) (quoting *Mitchell v. Lublin, McGaughy & Associates*, 358 U.S. 207, 211 (1959))). In doing so, the Court has explained that exemptions from the FLSA's requirements are appropriate only if "plainly and unmistakably within [the Act's] terms and spirit" (*A. H. Phillips, Inc. v. Walling*, 324 U.S. 490, 493 (1945)), and should not be "enlarge[d] by implication" (*Holly Hill*, 322 U.S. at 618). The Court has repeatedly applied this principle in refusing to read unstated exceptions either into Section 15(a)(1) (see *White Plains Publishing Co.*, 327 U.S. at 181, 183-184) or into the definitional provisions of Section 3 (see *United States Cartridge Co.*, 339 U.S. at 512-515; *United States v. Rosenwasser*, 323 U.S. 360, 362-363 (1945); see generally *Tony and Susan Alamo Foundation*, 471 U.S. at 295).¹²

The Secretary of Labor, whose interpretation of the FLSA is entitled to substantial deference (see, e.g. *Tony and Susan Alamo Foundation*, 471 U.S. at 297), has also consistently read Section 15(a)(1) broadly and literally. The Secretary has brought successful actions under the provision against a range of persons who, like petitioner, were at least one step removed from the employer that committed the minimum wage or overtime violation. See, e.g., *Southern Advance Bag & Paper Co. v. United States*, 133 F.2d

¹² Similarly, the Court has declined to give a broad reading to Section 13, 29 U.S.C. 213, which creates exemptions from the FLSA's coverage, explaining that "[i]t is well settled that exemptions from the Fair Labor Standards Act are to be narrowly construed." *Mitchell v. Kentucky Finance Co.*, 359 U.S. 290, 295 (1959). See *Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388, 392 (1960).

449 (5th Cir. 1943) (manufacturer covered where producer of component materials violated the Act); *Wirtz v. Lone Star Steel Co.*, 405 F.2d 668, 670 (5th Cir. 1968) (mill owner covered where violation committed by independent contractor). And the Secretary has sought to apply Section 15(a)(1) against secured creditors for more than 20 years.¹³

2. *Legislative History.* a. While the clarity of the statutory language is enough to resolve this case, the legislative history of the FLSA also provides compelling support for the court of appeals' conclusion that Congress meant what it said in applying Section 15(a)(1) to "any person." The FLSA was enacted shortly after this Court's invalidation of a congressional delegation of power in *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935). To forestall another delegation challenge, the FLSA was drafted with precision. As the Senate Committee on Education and Labor explained, "[t]he committee has diligently endeavored to write in the law itself, the rules and legal prohibitions intended to accomplish the desired objectives * * * [t]he committee[] seeking thus to decide every question that calls for a decision by Congress on legislative policies." S. Rep.

¹³ The Secretary's attempts to enjoin creditors from shipping hot goods were unsuccessful in *Powell Knitting Mills, Shultz v. Factors, Inc.*, 65 Lab. Cas. (CCH) ¶ 32,487 (4th Cir. 1971), and *Dunlop v. Sportsmaster, Inc.*, 77 Lab. Cas. (CCH) ¶ 33,293 (E.D. Tenn. 1975). The Secretary prevailed against a secured creditor in *Brock v. LTW Sportswear, Inc.*, C.A. No. 2-86-007 (M.D. Tenn. Aug. 22 and 29, and Sept. 18, 1986), and against a similarly situated entity in *Brock v. Kentucky Ridge Mining Co.*, C.A. No. 85-0180-O(M) (W.D. Ky. Oct. 11, 1985), as well as in the district courts and court of appeals below.

884, 75th Cong., 1st Sess. 5 (1937).¹⁴ See generally *Fair Labor Standards Act of 1937: Joint Hearings on S. 2475 and H.R. 7200 Before the Senate Comm. on Education and Labor and the House Comm. on Labor*, 75th Cong., 1st Sess. 1-89 (1937) (statement of Ass't Att'y Gen. Robert H. Jackson) (*1937 Joint Hearings*). Given the pains taken with the statutory language, it is hardly likely that Congress expected either the courts or the Secretary to discover unwritten exemptions in the Act.¹⁵

¹⁴ S. 2475, 75th Cong., 1st Sess. (1937), the bill ultimately enacted as the FLSA, initially provided for the creation of a Labor Standards Board to administer the Act. This Board was to have broad authority, among other things, to set minimum wages and maximum hours, and to grant exemptions from various standards set by the Act (see S. 2475, *supra*, §§ 4, 6, 18). In the interest of legislative precision, however, Congress chose not to create the Board, opting instead to write nationwide wage and hour standards into the Act itself. Congress also chose to delegate more limited administrative authority to an extant agency, the Department of Labor. See H.R. Rep. 2182, 75th Cong., 3d Sess. 2-3, 6, 9 (1938); H.R. Conf. Rep. 2738, 75th Cong., 3d Sess. 29-30 (1938). See generally *Gemsco, Inc. v. Walling*, 324 U.S. 244, 263-264 (1945). At the same time, Congress rejected a number of exemptions that appeared in the initial bill, and consolidated and made more specific those that were retained. Compare S. 2475, *supra*, with 52 Stat. 1070. See generally H.R. Conf. Rep. 2738, *supra*, at 29.

¹⁵ In arguing that Congress did not intend the hot goods clause to be broadly applicable, petitioner relies exclusively on snippets from the hearings that preceded enactment of the FLSA (see Pet. Br. 27-28 & n.36). Petitioner cites these excerpts for the proposition that Congress made Section 15(a)(1) applicable against "any person" simply to ensure that a principal could be enjoined from shipping hot goods that had been produced by a subcontractor under substandard conditions. The cited excerpts do indeed indicate that the

The care paid to the language of the FLSA is particularly significant here, because Congress devoted considerable attention to the specific question whether "innocent" purchasers of hot goods should be exempted from Section 15(a)(1). As noted above, Section 15(a)(1) originally contained one exception, for common carriers. That Congress felt the need to write such an exception into the Act plainly reflected its expectation that the bar on the transportation of hot goods would otherwise be all-inclusive. Indeed, the common carrier exception was drafted not because Congress wanted generally to permit the shipment of hot goods by "nonculpable" parties, but rather "to prevent a case involving the constitutionality of the act from arising in a suit between a shipper and a common carrier, to which the Government was not a party, inasmuch as the common carrier has no interest in the issue of constitutionality, but only in its

drafters of the Administration's bill intended Section 15(a)(1) to apply in such a situation. See *1937 Joint Hearings* 74-75, 86-87 (statement of Ass't Att'y Gen. Robert H. Jackson). But there is absolutely no hint in the hearings that those drafters—let alone Congress—intended Section 15(a)(1) to apply *only* in that situation. To the contrary, several witnesses understood that the proposed legislation would prevent even "innocent purchasers without notice" from "shipping [hot goods] in interstate commerce." *1937 Joint Hearings* 937 (statement of George H. Davis, President, Chamber of Commerce of the United States); *id.* at 941 (statement of Rep. Thomas). The congressional reports themselves provide no indication that Section 15(a)(1) contains hidden exceptions; the reports describe the statute as broadly "mak[ing] it unlawful to ship or sell in commerce * * * any goods in the production of which any employee was employed in violation of section 6 or 7." H.R. Conf. Rep. 2738, *supra*, at 33. See H.R. Rep. 2182, *supra*, at 14; S. Rep. 884, *supra*, at 7.

obligation to accept goods for transportation." H.R. Rep. 2182, 75th Cong., 3d Sess. 14 (1938).

At the same time, Congress carefully considered—and declined to enact—a provision that would have permitted certain good faith purchasers to escape the ban on the shipment of hot goods. That provision, contained in a bill that passed the Senate (and that, as significantly modified, became the FLSA), would have permitted a proposed Labor Standards Board to exempt goods from the reach of Section 15(a)(1) if, among other things, the Board found that the persons with an interest in the goods "had no reason to believe that any substandard labor condition existed in the production of such goods." S. 2475, 75th Cong., 1st Sess. § 18(c) (1937). See S. Rep. 884, *supra*, at 9. This provision, however, did not survive consideration by the House Labor Committee (compare H.R. Rep. 1452, 75th Cong., 1st Sess. 19 (1937), with H.R. Rep. 2182, *supra*, at 15), and did not appear in the final bill that emerged from conference. See H.R. Conf. Rep. 2738, 75th Cong., 3d Sess. 25-26, 33 (1938). Congress thus deliberately declined to carve out an exception to Section 15(a)(1) for persons who are not directly responsible for the violation of the Act.¹⁶

¹⁶ Congress also considered, but declined to enact, a provision that would have excepted certain persons from criminal prosecution for transporting hot goods. Both the full Senate and the House Labor Committee initially approved a provision that would have barred prosecution of any person—other than the producer—who had secured a written representation from the producer that the shipped goods had been produced in compliance with the Act. See S. 2475, *supra*, § 14c; H.R. Rep. 1452, *supra*, at 18. Again, however, this provision did not appear in the bill that ultimately passed the House, and did not survive conference. See H.R. Conf. Rep. 2738, *supra*, at 20, 26, 33.

Petitioner takes a different view of the significance of this legislative history. Noting that Congress did not specifically explain its reasons for dropping the proposed good faith exception (see Pet. Br. 30-31), petitioner suggests that "the only plausible inference that can be drawn from the omission of the [Labor Standards Board's] exemption authority is that Congress reasonably concluded that the provision was unnecessary" (*id.* at 32). This argument—which amounts to an assertion that Congress should be deemed to have enacted an exemption that it specifically removed from the legislation—has no merit whatsoever.

First, petitioner's suggestion that Congress viewed a good faith exception as "unnecessary" is belied by the enactment of the exception for common carriers, which evidences the congressional expectation that all entities are to be covered by Section 15(a)(1) unless specifically exempted. More fundamentally, petitioner's argument turns on its head the Court's usual approach to statutory interpretation. "Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language." *Cardoza-Fonseca*, slip op. 21 (citation omitted). See generally *Fox v. Standard Oil Co.*, 294 U.S. 87, 96 (1935). And even if Congress's decision to delete the proposed good faith exception is not itself probative of a specific congressional intent to *subject* good faith purchasers to the prohibitions of Section 15(a)(1),¹⁷

¹⁷ Noting that the good faith exception would have been administered by the proposed Labor Standards Board, petitioner suggests (Pet. Br. 30-31) that omission of the exception from the Act was an essentially inadvertent consequence of

the consideration and subsequent deletion of the exception can hardly be said to *exempt* such entities from the prohibition against the shipment of hot goods. As this Court has noted in rejecting a similarly farfetched argument from the FLSA's legislative history, "[t]he plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction." *Gemsco, Inc. v. Walling*, 324 U.S. 244, 260 (1945).

b. Similar observations may be made about petitioner's reliance (Pet. Br. 32-38) on the 1949 amendment of Section 15(a)(1), which permits the shipment of hot goods by a purchaser who acquired the goods for value, in good faith, without notice of the FLSA violations, and after obtaining written assurance from the producer that the goods had been manufactured in compliance with the Act. Relying on snippets from congressional hearings, petitioner maintains that the 1949 amendment "confirmed what

Congress's decision not to create such a Board. See note 14, *supra*. The deleted provision, however, simply gave the Board the authority to except certain goods from the reach of Section 15(a)(1) if it was "established to the satisfaction of the Board that every person having a substantial proprietary interest in the goods had no reason to believe that any substandard condition existed in the production of the goods." S. Rep. 884, *supra*, at 9. The exemption thus would have permitted the Board to lift, through administrative action, the otherwise generally applicable bar to the shipment of hot goods. By failing to create an agency that could grant such administrative relief, Congress kept the bar absolute. It is appropriate to add that, had the FLSA as enacted contained the deleted provision, petitioner—which became aware of Ely's failure to pay its employees prior to foreclosure—would not have qualified for an exemption on the facts of this case.

was manifestly implicit in the Act, as adopted in 1938, namely, that Section 15(a)(1) was never intended to be invoked against innocent purchasers" (Pet. Br. 36 (footnote omitted)). But this is simply not the case.

When it enacted the 1949 amendment to Section 15(a)(1), Congress made clear its understanding that, under existing law, "a purchaser who ships in commerce goods produced by another person who violated the wage-and-hour provisions of the act in the production of such goods, commits an unlawful act." H.R. Rep. 267, 81st Cong., 1st Sess. 39 (1949). See *Amendments to the Fair Labor Standards Act of 1938: Hearings on H.R. 2033 Before the House Comm. on Education and Labor*, 81st Cong., 1st Sess. 690 (1949) (statement of Mr. Forsythe) ("As a general matter, the intent and knowledge of the man who bought [the hot goods] does not matter."). The 1949 amendment was designed to *change* this situation "to make it lawful for a purchaser in good faith of goods produced in violation of the act to sell such goods in commerce." H.R. Conf. Rep. 1453, 81st Cong., 1st Sess. 31 (1949) (emphasis added).

Far from confirming any earlier understanding of the FLSA, the 1949 legislation thus created, for the first time, a mechanism by which bona fide purchasers could take steps to "protect themselves from unintentionally violating the act by shipping such so-called 'hot goods' in commerce" (H.R. Rep. 267, *supra*, at 39).¹⁸ In this way, the 1949 amendment—

¹⁸ Petitioner's failure to appreciate this may stem in part from its misstatement of the 1949 enforcement policy of the Department of Labor's Wage and Hour Division, which evidently inspired the 1949 amendment of Section 15(a)(1). As petitioner explains it, "[t]he Administrator had asserted

notwithstanding petitioner's bald assertion to the contrary (Pet. Br. 37)—carved out a narrow exception to Section 15(a)(1). As the Conference Report explained, the amendment imposed “[a]n affirmative duty * * * upon [the purchaser] to assure himself that the goods in question were produced in compliance with the act, and he must have secured written

that certain ordinary commercial purchasers would be subject to injunction under Section 15(a)(1), if they failed to ‘police’ their vendors’ compliance with the wage and hour provisions of the FLSA” (Pet. Br. 33 (footnote omitted)). Petitioner also maintains that “the Administrator at least recognized that Congress never intended Section 15(a)(1) to be invoked against a person who acquired hot goods, innocently and in good faith” (Pet. Br. 34). The first of these statements is misleading and the second is incorrect. In fact, the Administrator “of course[] recognize[d]” that if the purchaser “neither knew nor had reason to think that the goods he purchased were produced in violation of the Act, he should not be accused of wilfully violating” Section 15(a)(1), and therefore would not be subject to *criminal* prosecution. But the Administrator added that “even if there has been no knowledge the statute makes it unlawful to ship any ‘hot goods’ in interstate commerce, the Division has no choice but to stop the movement of the goods in interstate commerce.” “Insurance Against ‘Hot Goods,’” reprinted in *BNA Wage and Hour Manual* 937 (Cum. 1945). The Administrator therefore suggested that purchasers “police” their suppliers as a “precaution[]” to eliminate the “possibility that [they] may be receiving ‘hot goods’ with which [they] may be ‘stuck’” (*id.* at 938); such policing would provide a “means of protection” so that a purchaser would not “find himself with ‘hot goods’ on hand which he cannot ship across State lines” (*id.* at 937). By instead permitting the purchaser to rely on the supplier’s written assurance of compliance with the FLSA, the 1949 amendment to Section 15(a)(1) simply provided purchasers with a less burdensome means of “protect[ing] themselves from unintentionally violating the act.” H.R. Rep. 267, *supra*, at 39.

assurance to that effect from the producer of the goods.” H.R. Conf. Rep. 1453, *supra*, at 31.¹⁹ If Congress had wanted to create a broader exemption for *all* good faith purchasers, or for secured creditors, it surely knew how to do so: “The idea which is now sought to be read into [the FLSA] is not so complicated nor is English speech so poor that the words were not easily available to express the idea or at least to suggest it.” *Holly Hill*, 322 U.S. at 618.

3. *Legislative Policy.* a. Like petitioner’s analysis of the legislative history, its lengthy and labored discussion of the statutory purpose is simply beside the point, given the unambiguous statutory language: “The ‘plain purpose’ of legislation * * * is determined in the first instance with reference to the plain language of the statute itself,” so that “[i]nvocation of the ‘plain purpose’ * * * at the expense of the terms of

¹⁹ Statements made at the hearings that preceded the enactment of the 1949 amendment of Section 15(a)(1), upon which petitioner principally relies (see Pet. Br. 35, 37-38), are, to put it charitably, opaque; those statements certainly do not establish that “Congressmen unequivocally confirmed that the Administrator’s reading of Section 15(a)(1) swept far too broadly” (Pet. Br. 35). At best, the hearing transcripts indicate that certain congressmen were concerned that the FLSA “provided no method whatsoever for cooling off [hot] goods.” *Amendments to the Fair Labor Standards Act of 1938: Hearings on H.R. 2033 Before the House Comm. on Education and Labor*, 81st Cong., 1st Sess. 689 (1949) (1949 *Hearings*) (statement of Rep. Barden); see *id.* at 688 (statement of Rep. Barden). Congress essentially remedied this problem by permitting purchasers to insulate themselves from the operation of Section 15(a)(1) through reliance on a written assurance of compliance with the FLSA. Other congressmen quoted by petitioner evidently were concerned about the possible prosecution of innocent shippers of hot goods. See 1949 *Hearings* 690 (statement of Rep. Jacobs).

the statute * * * prevents the effectuation of congressional intent." *Board of Governors v. Dimension Financial Corp.*, No. 84-1274 (Jan. 22, 1986), slip op. 12. But even on its own terms, petitioners' analysis is off the mark. In fact, the court of appeals' literal reading of Section 15(a)(1) is entirely consistent with the policy of the FLSA.

This Court has repeatedly explained that "the goal [of the Act is to] outlaw[] from interstate commerce goods produced under conditions that fall below minimum standards of decency." *Tony & Susan Alamo Foundation*, 471 U.S. at 296. See *United States v. Darby*, 312 U.S. 100, 117 (1941). To this end, Section 15(a)(1) prohibits the interstate shipment of goods produced in violation of the Act. In doing so, the provision serves several fundamental statutory purposes. The prospect that such products will be barred from interstate commerce provides a strong incentive for employers to adhere to the Act's minimum wage and overtime provisions. See *Darby*, 312 U.S. at 115; *United States Cartridge Co.*, 339 U.S. at 510. And the actual removal of the products from commerce overcomes the unfair competitive advantage that would otherwise be enjoyed by sellers of cheaply produced hot goods.²⁰

²⁰ Petitioner is incorrect in asserting that "Congress was concerned about competitors only to the extent that competition from 'chislers' had the effect of driving wages down" (Pet. Br. 24-25 (footnote omitted)). The possibility of such a phenomenon certainly was one congressional concern, as the material cited by petitioner indicates. But the congressional findings and declaration of policy also expressly state that failure to pay an adequate wage "constitutes an unfair method of competition in commerce" (29 U.S.C. 202(a)(3)) that the Act was designed to combat. The drafters of the FLSA reiterated in committee reports (see H.R. Conf. Rep. 2738,

At the same time, the exclusion from interstate commerce of goods produced under substandard conditions is more than a simple enforcement mechanism to achieve other statutory aims: it is itself one of the purposes of the FLSA. President Roosevelt, in a message to Congress that inspired passage of the Act (see H.R. Rep. 1452, *supra*, at 8; S. Rep. 884, *supra*, at 1-3), declared flatly that "[g]oods produced under conditions which do not meet rudimentary standards of decency should be regarded as contraband and ought not to be allowed to pollute the channels of interstate trade." H.R. Doc. 255, 75th Cong., 1st Sess. 3 (1937). See *1937 Joint Hearings* 8 (statement of Ass't Att'y Gen. Robert H. Jackson); *id.* at

supra, at 17; H.R. Rep. 1452, *supra*, at 16), and on the floor of Congress (see, e.g., 81 Cong. Rec. 7651 (1937) (statement of Sen. Black); *ibid.* (statement of Sen. Walsh)) that "one of the objectives of the bill is that the progressive employer in good standing not be subjected in the public market to competition with chisellers and sweatshop operators" (*ibid.*). See *1937 Joint Hearings* 3, 15, 37, 51, 55 (statement of Ass't Att'y Gen. Robert H. Jackson); *id.* at 17 (statement of Sen. Pepper); *id.* at 183-184 (statement of Secretary of Labor Frances Perkins). This Court thus has rejected the contention that, "while the prohibition [in Section 15(a)(1)] is nominally a regulation of the commerce its [real] purpose is regulation of wages and hours." *Darby*, 312 U.S. at 113. Instead, the Court has noted Congress's finding that "substandard wages and excessive hours, when imposed on employees of a company shipping goods into other States, gave the exporting company an advantage over companies in the exporting States. Having so found, Congress decided as a matter of policy that such an advantage in interstate competition was an 'unfair' one, and one that had the additional undesirable effect of driving down labor conditions in the importing States." *Maryland v. Wirtz*, 392 U.S. 183, 189 (1968) (emphasis added; footnote omitted). See *Darby*, 312 U.S. at 109-110, 122.

177 (statement of Secretary of Labor Frances Perkins). Not surprisingly, this Court's earliest interpretation of the FLSA accordingly announced that one "obvious purpose of the Act" was to "prevent the interstate transportation of the proscribed product." *Darby*, 312 U.S. at 117.

b. All of these statutory purposes are furthered by the ruling below. Most obviously, of course, applying Section 15(a)(1) to petitioner serves "to lessen * * * the distribution in commerce of goods produced under subnormal labor conditions." *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 727 (1947).²¹ But a literal reading of Section 15(a)(1) also serves the Act's other purposes.

The court of appeals' ruling supplies a strong incentive, both for employers to comply and for creditors that closely oversee the operations of employers to insist on compliance, with the FLSA's minimum wage and overtime provisions. By applying Section 15(a)(1) to hot goods after they leave the producer's hands, a literal reading of the provision puts struggling employers like Ely (and their creditors) on notice that failure to pay employees is not an appropriate (or profitable) means of cutting costs and

²¹ That the court of appeals permitted petitioner to sell the goods on the condition that it compensate the unpaid employees if Section 15(a)(1) is found applicable does not undercut the court's recognition (see Pet. App. 7a) that hot goods are contraband. By requiring petitioner to hold an amount equal to the value of the unpaid wages in escrow pending resolution of this case, the court explained that it had "effectively removed the 'taint' from the goods" (*id.* at 10a n.9). In any event, petitioner may not invoke this practical accommodation, made at its request, permitting it to substitute cash for tangible collateral, as determinative of any legal issue in the case. See page 40, *infra*.

that continuing to extract employee labor for which the employer has no means of paying is not an acceptable practice. Such employers will know that goods produced by unpaid employees have a significant reduced value both for prospective purchasers and for lenders who otherwise might provide inventory-backed financing. A literal application of Section 15(a)(1) also reduces the incentive that creditors would otherwise have to encourage the continuation of manufacturing operations (and the production of collateral) under conditions where employees will likely not be paid. As the Western District court noted below, "if foreclosing creditors are free to ship and sell tainted goods across state lines, the temptation to overextend credit to marginal producers is strong, as is the likelihood that such producers will become unable to meet their payrolls" (Pet. App. 24a).

More generally, reading Section 15(a)(1) to reach "any person" holding hot goods eliminates the financial advantages that creditors like petitioner would otherwise obtain from the failure of debtors to comply with the Act. By liquidating finished goods rather than bulk raw materials, petitioner is benefiting from the labor of Ely's employees. And while it may not actually have colluded in Ely's failure to comply with the Act, petitioner—unlike those employees—was aware both of Ely's precarious financial condition and of the termination of the financing agreement that had previously made it possible for Ely to meet its payroll. In these circumstances, the FLSA, which was enacted to "protect the fundamental interests of free labor" (H.R. Doc. 255, *supra*, at 3 (President Roosevelt's Message of May 24, 1937)), should not be read to give petitioner the benefit of Ely's violation

of the Act. See generally *A.H. Phillips Inc. v. Walling*, 324 U.S. 490, 493 (1945).

C. Section 15(a)(1) Does Not Establish a Lien For Employee Wages, And Does Not Conflict With State Insolvency or Federal Bankruptcy Law

Given the clarity of the statutory language and legislative history, it is understandable that petitioner is ultimately forced to look outside the terms and purposes of the FLSA to find arguments that support its narrow construction of Section 15(a)(1). This effort leads petitioner to contend (see Pet. Br. 13-16, 38-45) that Section 15(a)(1), applied literally, would create a "secret" lien for employee wage claims that would interfere with the creditor rights and priorities otherwise established by state and federal law. Petitioner makes this argument because, it suggests, Section 15(a)(1) was applied by the court of appeals "to address the relative priority of creditors' claims against insolvent debtors" (Pet. Br. 38). But this analysis of the decision below fundamentally misunderstands the purpose and application of the FLSA.²²

1. Section 15(a)(1) is not—and was not interpreted by the courts below to be—at all concerned with the enforcement or priority of creditors' claims. As the courts below noted, the Secretary's action against petitioner "[was] brought, not to compel the foreclosing creditor to pay the statutory wages * * *

²² Given the clarity of the FLSA's language and the breadth of its purposes, however, it is manifest that the court of appeals' reading of Section 15(a)(1) would be appropriate even if that reading could be said to displace state insolvency laws. See generally *Rose v. Arkansas State Police*, No. 85-1388 (Nov. 3, 1986) (per curiam).

but to keep tainted goods from entering the channels of interstate commerce" (Pet. App. 24a). Petitioner still "'owns' the goods. The 'hot goods' provision merely prevents [petitioner] from shipping, delivering or selling the goods in interstate commerce" (*id.* at 10a). The rulings below did not alter petitioner's rights in the collateral as against Ely, give Ely's employees any ownership interest in the property, or establish a lien of any sort on the collateral. Instead, the court of appeals simply recognized that Section 15(a)(1) imposes a specific restriction, grounded in public policy, on the shipment of "tainted" goods by anyone. The court ruled only that the restriction remains applicable to the goods when they pass from the manufacturer to a foreclosing creditor.

The fact that one set of beneficiaries of the statute also became creditors of the employer (because they have wage claims), and the fact that this particular employer apparently is unable to pay all its debts, are incidental to the ruling below. Section 15(a)(1) has other beneficiaries—including competing manufacturers and their employees, who are protected against the entry of Ely's hot goods into interstate commerce—and the ruling below would be equally necessary and correct if Ely were solvent and had simply declined to pay either its employees or petitioner.

There are numerous similar laws, "hav[ing] the quality of police regulations" (*Kentucky Whip & Collar Co. v. Illinois Cent. R.R.*, 299 U.S. 334, 347 (1937)), that create restrictions to which *all* interests in covered property are subordinated. Long before the enactment of the FLSA, this Court had recognized Congress's plenary power under the Commerce Clause to exclude various goods altogether

from interstate commerce because they are inherently harmful (see, e.g., *Hipolite Egg Co. v. United States*, 220 U.S. 45 (1911)), or because the purpose of the commerce is improper (see, e.g., *Lottery Case*, 188 U.S. 321 (1903)), or because, as here, commerce in the goods is inconsistent with congressional policy (see, e.g., *Kentucky Whip & Collar Co. v. Illinois Cent. R.R.*, *supra*). Congress typically achieves these regulatory purposes, as it did in the FLSA, by prohibiting "any person" from introducing into commerce goods that were not produced in conformity with the legislative standards.²³ These prohibitions generally are enforceable, as they are in the FLSA, by the threat of an injunctive action or criminal penalties.²⁴ And such general regulatory laws plainly are not, as petitioner asserts, transformed into laws dealing with "creditors' rights" simply because they may be applied against an entity that happens to be a creditor.

2. As the courts below observed, the FLSA is one of these generally applicable "laws of the land" (Pet. App. 32a; see *id.* at 25a), which merely "add[s] to the list of interstate contraband what Justice Holmes in his dissent [in *Hammer v. Dagenhart*, 247 U.S. 251, 280 (1918)] so aptly called the 'product of ruined lives.'" 1937 Joint Hearings 8 (statement of

²³ See, e.g., 15 U.S.C. 1191(a), 1192 (Flammable Fabrics Act); 15 U.S.C. 1211 (household refrigerators); 15 U.S.C. 1261(e), 1263(a)-(c) and (f) (Federal Hazardous Substances Act); 21 U.S.C. 321(e), 331(a)-(e) (Food, Drug and Cosmetic Act); 21 U.S.C. 453(j), 458(a)(2)-(4) (Poultry Products Inspection Act).

²⁴ See, e.g., 15 U.S.C. 1194(b), 1195(a), 1196; 15 U.S.C. 1212; 15 U.S.C. 1264, 1267; 21 U.S.C. 332, 333; 21 U.S.C. 461, 467c.

Ass't Att'y Gen. Robert H. Jackson). Section 15(a) (1) effectuates the congressional policy of "excluding from interstate commerce all goods * * * which do not conform to the specified labor standards." *Darby*, 312 U.S. at 121. Thus, an action by the Secretary for injunctive relief under Section 17 of the FLSA, 29 U.S.C. 217, is designed "not to collect a debt but rather to redress a wrong being done to the public good" (*Donovan v. University of Texas*, 643 F.2d 1201, 1208 (5th Cir. 1981) (citation omitted)); it protects the public generally from "the spread of substandard labor conditions." *Darby*, 312 U.S. at 122. The purpose of such a suit is not to obtain funds "owed by an employer to his employee but to correct a continuing offense against the public interest." *Wirtz v. Jones*, 340 F.2d 901, 903-904 (5th Cir. 1965). See *Hodgson v. YB Quezada*, 498 F.2d 5, 6 (9th Cir. 1974); *Hodgson v. Wheaton Glass Co.*, 446 F.2d 527, 535-536 (3d Cir. 1971).²⁵ Indeed, if an employee refuses to accept back pay that is awarded in a Section 17 action brought by the Secretary, the funds are not returned to the offending employer. See *University of Texas*, 643 F.2d at 1208 n.16; *Burk Builders, Inc. v. Wirtz*, 355 F.2d 451, 453 (5th Cir. 1966). Cf. *YB Quezada*, 498 F.2d at 6; *Wheaton Glass Co.*, 446 F.2d at 536.

Obviously, an injunctive action brought by the Secretary against the owner of hot goods has an

²⁵ See generally *Donovan v. Brown Equipment & Service Tools, Inc.*, 666 F.2d 148, 156-157 (5th Cir. 1982); *Donovan v. TMC Industries, Ltd.*, 95 Lab. Cas. (CCH) ¶ 34,278, at 44,976 (N.D. Ga. 1982); *Brennan v. T & T Trucking, Inc.*, 396 F. Supp. 615, 618 (N.D. Okla. 1975); *Wirtz v. Robert E. Bob Adair, Inc.*, 224 F. Supp. 750, 756 (W.D. Ark. 1963); *Wirtz v. Alapaha Yellow Pine Products, Inc.*, 217 F. Supp. 465, 470 (M.D. Ga. 1963).

effect on the owner's ability to dispose of the property as he would like. But that effect cannot be said to disturb the relative priority of creditors, any more than does the operation of the Flammable Fabrics Act or some other statute (see note 23, *supra*) that prohibits the introduction into commerce of dangerous or defective goods. A secured creditor who obtained through foreclosure goods that subsequently failed to meet the standards of the Flammable Fabrics Act, for example, could hardly argue that that Act was in tension with state insolvency law and therefore should be construed not to reach secured creditors. Yet petitioner is making an essentially identical argument here; there is no difference in principle between the owner of flammable fabrics and the owner of hot goods.

To be sure, petitioner may cure the taint here by paying an amount equivalent to the minimum wages and overtime compensation that were wrongfully withheld from Ely's employees. But that possibility does not give Ely's employees a "claim" on the employer's assets that has "priority" over the claims of a secured creditor. The taint here arose because Ely's goods were produced under substandard labor conditions; paying the employees now may be said to remove the taint by, in a sense, retroactively altering those conditions. The hot goods thus are "cooled" by addressing the employer's employment practices, rather than by remedying a defect in the goods themselves.²⁶ That distinction, however, does not change

²⁶ Other statutes that parallel the FLSA in barring defective goods from commerce also, like the FLSA, permit sale or shipment of the goods if the defect is cured. See, e.g., 15 U.S.C. 1195(d); 15 U.S.C. 1265(c); 21 U.S.C. 334(d); 21 U.S.C. 467b(a).

the essential character of a lawsuit by the Secretary under Section 17: such a suit "cannot be deemed a representative action on behalf of the individual employees" (*University of Texas*, 643 F.2d at 1206), and remains "primarily in the public interest" (*id.* at 1208). "The employer has violated a federal statute, it has not merely breached a private agreement, and it is the enforcement of the statute, not compliance with a private contract that concerns the Secretary." *Donovan v. TMC Industries, Ltd.*, 95 Lab. Cas. (CCH) ¶ 34,278, at 44,980 (N.D. Ga. 1982) (footnote omitted).

At bottom, then, petitioner's argument that Section 15(a)(1) creates a lien founders on the settled principle that a foreclosing creditor does not obtain greater rights in the collateral than his debtor had. Ely failed to comply with the FLSA and therefore could not have shipped its hot goods in interstate commerce. Petitioner—which, the courts below found, knew it was funding Ely's payroll (Pet. App. 19a) and which continued monitoring Ely's production even after the financing agreement was terminated—should not have expected to gain greater rights when it took possession of the property. Nor does a literal reading of the FLSA make the extension of credit unduly hazardous: lenders routinely monitor their borrowers' activities closely to ensure that the borrowers comply with both public law and their obligations to other creditors, lest a legal bar or a superior lien (for taxes, to a supplier, or to employees) interfere with the exercise of the lender's rights. Indeed, as the court of appeals noted, petitioner received "various daily, weekly, and monthly reports" from Ely (Pet. App. 2a). And petitioner scrutinized the data with which it was most concerned, including

Ely's accounts receivable, inventory—and payroll taxes.

3. Petitioner's contention (Pet. Br. 42-44) that a literal application of the FLSA will interfere with the operation of the Bankruptcy Code is similarly mistaken. First, that contention is out-of-place here, since Ely never filed for bankruptcy. More fundamentally, as the court of appeals observed, "[t]he holding [in this case] does not change the priorities in bankruptcy" (Pet. App. 10a). As we noted above, the ruling below did not give Ely's employees any rights in Ely's estate; it simply allowed the Secretary to keep tainted goods out of interstate commerce.

The Bankruptcy Code itself expressly recognizes the distinction between the enforcement of general regulatory laws like the FLSA, which serve the broad public interest, and the enforcement of creditors' rights. Section 3(b)(4) of the Code, 11 U.S.C. 362(b)(4), excepts exercises of a "governmental unit's police or regulatory power" from the automatic stay otherwise imposed by Section 3(a)(1), 11 U.S.C. 362(a)(1), on proceedings against a debtor to collect pre-petition debts. Thus, "where a governmental unit is suing a debtor to prevent or stop a violation of * * * police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding is not stayed under the automatic stay." S. Rep. 95-989, 95th Cong., 2d Sess. 52 (1978).²⁷

²⁷ Section 3(b)(4), 11 U.S.C. 362(b)(4), has been held to except enforcement of a wide range of regulatory and police measures from the automatic stay. See, e.g., *NLRB v. Edward Cooper Painting Inc.*, 804 F.2d 934 (6th Cir. 1986) (unfair labor practice proceedings even where back pay is sought); *Cournoyer v. Town of Lincoln*, 790 F.2d 971 (1st Cir. 1986) (enforcement of zoning ordinance); *Penn Terra Limited v.*

Similarly, Section 3(b)(5) of the Code, 11 U.S.C. 362(b)(5), excepts "the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce * * * [its] police or regulatory power" from the usual stay imposed on actions to enforce judgments against debtors (see Section 3(a)(2), 11 U.S.C. 362(a)(2)). This exception permits "enforcement of an injunction and * * * permit[s] the entry of a money judgment, but does not extend to permit enforcement of a money judgment." S. Rep. 95-989, *supra*, at 52. See generally *Midlantic Nat'l Bank v. New Jersey Dep't of Environmental Protection*, No. 84-801 (Jan. 27, 1986), slip op. 8-10.

Section 362(b)(4) is fully applicable to FLSA hot goods cases.²⁸ Relying on the broad public welfare

Dep't of Environmental Resources, 733 F.2d 267 (3d Cir. 1984) (injunction requiring debtor to correct violations of state environmental protection statutes); *Commodity Futures Trading Comm'n v. Income, Inc.*, 649 F.2d 128 (2d Cir. 1981) (providing Commodity Futures Trading Commission access to debtor's books and records); *In re Mansfield Tire & Rubber Co.*, 660 F.2d 1108 (6th Cir. 1981) (administration of state workers' compensation law); *NLRB v. Evans Plumbing Co.*, 639 F.2d 291 (5th Cir. 1981) (petition seeking reinstatement and back pay for discriminatorily discharged employees).

²⁸ Petitioner attempts to find significance in Congress's decision to delete trustees in bankruptcy from the list of entities included as "person[s]" in Section 3(a) of the Act (Pet. Br. 18 n.20). This argument is without merit. The version of the FLSA originally introduced in the Senate defined "person" to include "an individual, partnership, association, corporation, business trust, receiver, trustee, trustee in bankruptcy, or liquidating or reorganizing agent." S. 2475, *supra*, § 2(a)(1). The House substituted the following version, which appears in the present Act: "'Person' means an individual, partnership, association, corporation, business trust,

purposes underlying the FLSA in general and Section 15 and Section 17 in particular, the district and bankruptcy courts have uniformly concluded that enforcement proceedings under Section 17 fall within the Section 362(b)(4) exception. See *Donovan v. Health Care Resources, Inc.*, 102 Lab. Cas. (CCH) ¶ 34,596, at 46,505-46,506 (W.D. Mo. 1984); *TMC Industries*, 95 Lab. Cas. ¶ 34,278, at 44,979-44,981; *Donovan v. Timbers of Woodstock Restaurant, Inc.*, 93 Lab. Cas. (CCH) ¶ 34,155, at 44,426 (N.D. Ill. 1981); *In re Tauscher*, 24 Wage & Hour Cas. (BNA) 1310, 1311-1312 (Bankr. E.D. Wis. 1981). Cf. *Brennan v. T & T Trucking, Inc.*, 396 F. Supp. 615, 618 (N.D. Okla. 1975). As construed by the courts in these cases, Section 362(b)(4) permits the government to enforce the FLSA "without regard to the debtor's position in the bankruptcy court." *TMC Industries*, 95 Lab. Cas. ¶ 34,278, at 44,977.²⁹

legal representative, or any organized group of persons." 29 U.S.C. 203(a) (emphasis added). Congress thus substituted the inclusive term "legal representative" for the narrower categories listed in the Senate bill.

²⁹ Petitioner's suggestion (Pet. Br. 43) that the liquidation of bankrupt estates will be impeded if trustees are enjoined from selling hot goods is frivolous: such an application of the FLSA no more conflicts with the bankruptcy laws than does the Flammable Fabrics Act. The asserted conflicts between Section 15(a)(1) and the other federal laws cited by petitioner (Pet. Br. 44-45) are also in equal parts hypothetical and illusory. This case does not, of course, involve the Federal Tax Lien Act of 1966, the Packers and Stockyards Act, or the Perishable Agricultural Commodities Act. See *Ruckleshaus v. Monsanto Co.*, 467 U.S. 986, 1018 (1984). And the FLSA could not, in any event, conflict with those statutes. The Packers and Stockyards Act creates a trust in meat (and proceeds from its sale) in favor of all unpaid sellers of livestock (7 U.S.C. 196(b)), giving such sellers priority over

4. Finally, petitioner's contention (Pet. Br. 46-49) that this Court should not disturb the construction of the FLSA set out in *Powell Knitting Mills* is without merit. A single court of appeals'³⁰ 20-year-old, plainly erroneous interpretation of a significant federal statute is far from dispositive. Cf. *United States v. Mendoza*, 464 U.S. 154, 160-163 (1984). That interpretation, moreover, can hardly be said to have been accepted (or, for that matter, noticed) by Congress, which has not amended Section 15(a)(1) since 1949. It has not been endorsed by the Secretary, who has brought several enforcement actions against creditors outside the Second Circuit in the intervening years.³¹

secured lenders in bankruptcy (see *In re Gotham Provision Co.*, 669 F.2d 1000 (5th Cir.), cert. denied, 459 U.S. 858 (1982)), and under the Uniform Commercial Code (see *Filippo v. S. Bonaccorso & Sons, Inc.*, 466 F. Supp. 1008, 1022 (E.D. Pa. 1978)). The Perishable Agricultural Commodities Act (7 U.S.C. (Supp. III) 499e(c)), was patterned after the Packers and Stockyards Act and affords sellers of such commodities the same protections. See *In re Fresh Approach, Inc.*, 48 Bankr. 926 (Bankr. N.D. Tex. 1985). The FLSA, unlike those statutes, does not create a lien and therefore does not displace otherwise applicable lien priorities, any more than would a statute prohibiting the sale of tainted meat by an insolvent stockyard. And there can be no conflict between the FLSA and the Federal Tax Lien Act, Pub. L. No. 89-719, 80 Stat. 1125 *et seq.*, because the United States is not a "person" within the meaning of Section 15(a)(1). See 29 U.S.C. 203(a).

³⁰ The holding of *Powell Knitting Mills* was followed by the Fourth Circuit without analysis. *Shultz v. Factors, Inc.*, 65 Lab. Cas. (CCH) ¶ 32,487 (4th Cir. 1971).

³¹ In addition to the actions below, see *Shultz v. Factors, Inc.*, 65 Lab. Cas. (CCH) ¶ 32,487 (4th Cir. 1971); *Dunlop v. Sportsmasters, Inc.*, 77 Lab. Cas. (CCH) ¶ 33,293 (E.D. Tenn. 1975); *Brock v. Kentucky Ridge Mining Co.*, C.A. No. 85-0180-O(M) (W.D. Ky. Oct. 11, 1985); *Brock v. LTW Sportswear, Inc.*, C.A. No. 2-86-907 (M.D. Tenn. Aug. 22 and 29,

And the *Powell Knitting Mills* analysis—which established an open-ended and concededly (see 360 F.2d at 733) inexact exemption from Section 15(a)(1) for certain owners of hot goods—does not set out the “bright line” rule sought by petitioner (Pet. Br. 48). Such a rule is found, instead, in the plain language of Section 15(a)(1), which flatly bars the interstate shipment of hot goods by “any person.”

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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and Sept. 18, 1986) (secured creditor dismissed other paying back wages). See also *Donovan v. Standard Forge & Axle Co.*, C.A. No. 84-T-13 74 N (M.D. Ala. dismissed Nov. 15, 1984) (secured creditor intervened as defendant; action settled after preliminary injunction issued); *Donovan v. Fabrics America, Inc.*, C.A. No. 82-245-S (M.D. Ala. dismissed Jan. 12, 1984) (same).